

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

WP(C).No. 4479 OF 2007(G)

PETITIONERS:

- 1. K.S.DEVADASAN, S/O.SUKUMARAN,
DRIVER, THE KERALA STATE WAREHOUSING CORPORATION,
CONTAINER FREIGHT STATION, PETTA, TRIPUNITHURA,
RESIDING AT KANDAKKAPPALLY HOUSE, ANDHAKARANAZHI,
PATTANAKKAD, CHERTHALA-688 531.**
- 2. P.V.THANKACHAN, DRIVER,
KERALA STATE WAREHOUSING CORPORATION,
KUNNAMKULAM, RESIDING AT PAINADATHU HOUSE,
AYYAMPUZHA, AMALAPURAM, ERNAKULAM DISTRICT-
683 581.**
- 3. C.D.DILIP KUMAR,
DRIVER, KERALA STATE WAREHOUSING CORPORATION,
C.F.S., PETTA, THIRIPUNITHURA, RESIDING AT
CHIRAYIL VEEDU, CHANDIROOR P.O.,
CHERTHALA-688 547.**

**BY ADV. SRI.K.RAMAKUMAR
SMT.T.O.RAJITHA
SRI.A.SAMEER
SRI.M.MANOJKUMAR (CHELAKKADAN)**

RESPONDENTS:

- 1. THE KERALA STATE WAREHOUSING
CORPORATION, ERNAKULAM, REPRESENTED BY
ITS MANAGING DIRECTOR.**
- 2. THE BOARD OF DIRECTORS OF THE KERALA
STATE WAREHOUSING CORPORATION,
ERNAKULAM, REPRESENTED BY ITS CHAIRMAN.**

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**3. LT.COLONEL (RETIRED) K.G.RAMACHANDRAN,
MANAGING DIRECTOR,
THE KERALA STATE WAREHOUSING CORPORATION,
ERNAKULAM.**

BY ADV. SRI.MAJNU KOMATH, SC, K.S.W.C.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 02/04/2007, THE COURT ON 19/07/2007 DELIVERED THE
FOLLOWING:**

WP(C) NO: 4479/2007 G

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE NOTIFICATION PUBLISHED IN THE KERALA KAUMUDI DAILY DT. 25/7/2005 BY R1.

EXT.P2. COPY OF THE PROCEEDINGS DT. 25/08/2005 BY R1.

EXT.P3. COPY OF THE PROCEEDINGS DT. 25/08/2005 BY R1.

EXT.P4. COPY OF THE PROCEEDINGS DT. 25/08/05 BY R1 ALONG WITH JOINING REPORT ETC.

EXT.P5. COPY OF THE PROCEEDINGS DT. 1/3/06 BY R1.

EXT.P6. COPY OF THE PROCEEDINGS DT. 1/3/06 BY R1.

EXT.P7. COPY OF THE PROCEEDINGS DT. 1/3/06 BY R1.

EXT.P8. COPY OF THE PROCEEDINGS DT. 3/2/07 BY R1.

EXT.P9. COPY OF THE PROCEEDINGS DT. 3/2/07 BY R1.

True copy

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THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).No.4479 OF 2007-G

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Dated this the 19th day of July, 2007.

JUDGMENT

Petitioners challenge their termination from the services of the first respondent Corporation which is one constituted under the provisions of the Warehousing Corporations Act, 1962, the “Act”, for short.

2. Petitioners 1 and 2 claim that they were engaged as Drivers on daily wage basis from 2001 and the third petitioner claims that he was so engaged from 2003. Thereafter, they participated in a selection process pursuant to Ext.P1 notification dated 25-7-2005 and were selected and appointed as Drivers as per Exts.P2, P3 and P4 orders issued on 25-8-2005, in the scale of pay stated in

those orders. By Exts.P5, P6 and P7, their probation period was declared as over and they were absorbed permanently with effect from 1-3-2006. By the impugned Ext.P8 and P9 and like orders issued to the second petitioner, their services have been terminated.

3. The impugned orders, essentially, are built on the accusation that the selection process was initiated by the then Managing Director without the sanction of the Executive Committee, that too, without prescribing any age limit in the notification. It is further stated in Ext.P9 that the notification inviting applications was not published as enjoined by the Staff Regulations because it was published only in all editions of Chandrika daily and in the Trivandrum and Ernakulam editions of Kerala Kaumudi daily. It is the further ground in Ext.P8 that the appointments were made and the petitioners joined the service of the Corporation under orders of the then Managing Director, who could not have done it without the decision of the Executive Committee and that the Executive

Committee had approved the selection list and ratified the appointment of Drivers only on 11-11-2005.

4. On 12-2-2007, an interim order was passed by this Court directing that the termination of the service of the petitioners pursuant to Exts.P8 and P9 will stand stayed subject to the result of the writ petition.

5. In support of the impugned action, a counter affidavit is placed on record. It is contended therein that while Ext.P1 notification does not prescribe any age limit for the selection, the Corporation had been following the norms in the Government and that such practice has not been adhered to by the then Managing Director while issuing Ext.P1 notification, resulting in the recruitment of the petitioners who, according to the counter affidavit, were over-aged. It is also pleaded that the appointments were unnecessary and were merely financial burden being thrust on an institution which was already in a financial mess.

However, the plea of the petitioners that out of the four drivers who have been sent out, two drivers who are also terminated along with the petitioners, have been taken back on daily wages is admitted, though that is explained by stating that such action was due to the unexpected requirement at the Container Freight Station of the first respondent, as a result of the increase in business in that station. It is also pleaded that those two drivers are fully qualified and are within the age limit.

6. The first respondent issued the Kerala State Warehousing Corporation Regulations, 1963 which contains General Regulations and Staff Regulations. The Staff Regulations are issued under the title "the Kerala State Warehousing Corporation Staff Regulations 1963". Those Regulations, hereinafter referred to as "the Staff Regulations", are framed by the Corporation in exercise of authority under Section 42 of the Act. Those Regulations do not contain any provision by which an age limit is prescribed

for entry into service. Nor is there any incorporation of such prescription in the Government service into the Staff Regulations. The power to make appointments to the posts in Class IV is with the Managing Director, while appointments to posts in Class I, II and III shall be made by the Executive Committee, in terms of Regulation 6(1) of the Staff Regulations.

7. It is the admitted situation that after the petitioners were selected and appointed, the Executive Committee of the Corporation met on 11-11-2005 and approved the selection list and ratified the appointment of drivers. With such admitted position, a reading of the impugned orders would show that the Board decision referred to in the impugned orders, as taken on 13-11-2006, is one essentially recalling the decision of the Executive Committee ratifying the selection and appointment. The three reasons stated in the impugned orders are that (1) there was no decision of the Board of Directors authorizing the

Managing Director to fill up the vacancies, (2) only one vacancy existed on that date and (3) three persons appointed were over-aged. The fact that the selection and appointments stood ratified by the Executive Committee on 11-11-2005 is not in dispute. No age limit was prescribed in Ext.P1 notification. There is no provision in the Staff Regulations prescribing any upper age limit for recruitment while it fixes the age of retirement. The existence of only one vacancy was a matter to be taken into account by the Executive Committee when it decided on 11-11-2005 to approve the selection list and ratify the appointments. At any rate, the rights of the petitioners who were selected and appointed on the basis of a notification and whose services were also made permanent after completion of the probation period, cannot be taken away by a decision of the Board of Directors by undoing the selection, on the grounds stated in the impugned orders. The grounds on which the Board of Directors had resolved on 13-11-2006 to direct the Managing Director to take necessary action to terminate all irregular appointments, do not include

a ground that the action and the transactions were fraudulent. Such a reason has not been stated in the impugned orders. The stand taken in the counter affidavit accusing the earlier Managing Director and those others then in Office is insufficient to torpedo the accrued rights of the petitioners under Articles 14 and 16 of the Constitution of India.

8. For the aforesaid reasons, the decisions contained in Exts.P8 and P9 and like orders issued to the second petitioner are quashed and the impugned termination of the petitioners from the service of the first respondent is declared void. They would, therefore, stand reinstated by force of this judgment with all consequential benefits, including pay and allowances.

The writ petition is allowed as above. No costs.

Sha/-

**THOTTATHIL B. RADHAKRISHNAN,
JUDGE.**